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Wholesale Lender, BAC Home Loans Servicing,
LP, and Mortgage Electronic Registration
Systems, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JIM B. KIMBALL,

Plaintiff,

vs.

AMERICA'S WHOLESALE LENDER;
COUNTRYWIDE HOME LOANS, INC.; BAC
HOME LOAN SERVICING, LP, and
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS; and DOES 1-10,

Defendant.

Case No. CV10-05670

**JOINT CASE MANAGEMENT
STATEMENT**

Date: June 16, 2011
Time: 1:30 p.m.
Place: Dept. 4

First Amended FAC Filed: March 4, 2011
Honorable Lucy Koh

I. INTRODUCTION

The parties, by and through their respective counsel of record, conducted a good faith meet and confer for the purpose of discussing the issues addressed in Federal Rule of Civil Procedure 26(f) and Civil Local Rule 16-9. Pursuant to Local Rule 16-9, Plaintiff Jim Kimball and defendants Countrywide Home Loans, Inc. dba America's Wholesale Lender ("CHL"), BAC Home Loans Servicing, LP ("BACHL") and Mortgage Electronic Registration Systems, Inc. ("MERS")

(collectively “Defendants”). (collectively “Defendants”) (Plaintiffs and Defendants are referred to collectively as the “Parties”) hereby submit the following joint report reflecting the matters on which they agree and their respective views concerning the issues on which they disagree.

II. Jurisdiction And Service

The court has jurisdiction of this action pursuant to 28 USC §2201, California Code of Civil Procedure §1060-1062.5 (declaratory judgment) and California Code of Civil Procedure §761.020-761-.040 (quiet title), and 28 USC §1332 (a). This court also has, pursuant to 28 U.S.C. § 1367, supplemental jurisdiction over all other claims that are so related to claims in this action that they form part of the same case or controversy under Article III of the United States Constitution. All of the Defendants have been served.

2. Facts

A. Plaintiffs’ Contentions

Plaintiff brought this action to prevent the improper taking and/or foreclosure his family home by Defendants who no longer own the debt secured by the Plaintiff’s home. The Plaintiff also alleges that BAC intentionally and negligently misled him into believing that he would be able to modify his mortgage and has suffered damages as a result. The Plaintiff further alleges claims for promissory estoppel, breach of the covenant of good faith and fair dealing, and quiet title against entities (and possibly individuals) that have assigned away any right or interest they may have held in the Plaintiff’s property at some time.

B. Defendants’ Contentions

Defendants’ contentions are more fully laid out in the motion to dismiss currently set for June 16, 2011. In short, Defendants contend that this is a routine case where a borrower fell behind on his mortgage payments, which resulted in the initiation of foreclosure proceedings. The Plaintiff is a sophisticated real estate investor and loan officer who owns at least five *additional* properties. Defendants contend that Plaintiffs’ theory regarding securitization as well as their right to maintain

1 this suit is meritless.

2 **3. Legal Issues**

3 **A. Plaintiffs' Contentions**

4 Plaintiff's legal contentions are more thoroughly stated in its Opposition to Defendants
5 Motion to Dismiss. Plaintiffs believe that they have stated facts sufficient to survive a Motion to
6 Dismiss and have plead adequately that there exists a true controversy.

7 **B. Defendants' Contentions**

8 Defendants' view of the relevant legal issues is more thoroughly stated in its pending Motion
9 to Dismiss. Defendants believe that the following legal issue is in dispute: Whether Plaintiff's
10 theory, even assuming their facts as pled, affords them any relief.

11 **4. Motions**

12 The Court has already granted Defendants' Motion to Dismiss Plaintiffs' original complaint.
13 Defendants currently have a Motion to Dismiss the First Amended Complaint set for hearing on June
14 16, 2011. If that motion is unsuccessful, Defendants intend to move for summary judgment.

15 **5. Amendment of Pleadings**

16 Plaintiff has amended his complaint once.

17 **6. Evidence Preservation**

18 Defendants and Plaintiffs have taken steps to preserve evidence relevant to the issues
19 reasonably evident in this action.

20 **7. Disclosures**

21 The Parties request that initial disclosures be delayed until after the Court rules on both the
22 Motion to Dismiss.

23 **8. Discovery**

24 In the event Defendants' Motion to Dismiss is denied, Defendants intend to depose Plaintiff
25 and engage in written discovery. Plaintiffs intend to depose persons who are likely to lead to
26 discoverable information and intend to engage in written discovery.

27 **9. Class Actions**

28 Not Applicable.

10. Related Cases

None.

11. Relief

Plaintiff seeks the relief stated in the First Amended Complaint. At this time, Defendants do not intend to file any counterclaims.

12. Settlement and ADR

The Parties have agreed to Mediation through the Court's ADR program. A stipulation to that effect is filed concurrently with this statement.

13. Consent

The Parties do not consent to magistrate judge jurisdiction.

14. Other References

None.

15. Narrowing of Issues

None.

16. Expedited Schedule

The Parties do not believe this case is appropriate for an expedited schedule.

17. Scheduling

The Parties believe that it would be most efficient to defer setting any trial dates until after the Court rules on the Motion to Dismiss. Alternatively, the Parties propose the following schedule:

Trial: March 5, 2011

Last Day To Hear Dispositive Motions: January 18, 2012

Fact Discovery Cutoff: December 16, 2011

18. Trial

Plaintiff previously demanded a jury trial. The Parties estimate the trial will take 5 days.

19. Disclosure of Non-party Interested Entities or Persons

BACHLS is controlled by BAC GP, LLC, and by BANA LP, LLC, which are both wholly owned by Bank of America, National Association ("BANA"). BANA is a wholly owned subsidiary of BANA Holding Corp., which is a wholly owned subsidiary of BAC North America Holding

1 Company, which is a wholly owned subsidiary of NB Holdings Corp., which is a wholly owned
 2 subsidiary of Bank of America Corporation (“BAC”). BAC does not have any parent corporations
 3 and no publicly held company has an ownership interest of 10% or more of BAC.

4
 5 DATED: June 10, 2011

/s/ Matthew J. Brady

6 Matthew J. Brady
 REED SMITH LLP

7 Attorneys for Defendants
 8 Countrywide Home Loans, Inc. dba America’s
 9 Wholesale Lender, BAC Home Loans Servicing,
 LP, and Mortgage Electronic Registration Systems,
 Inc.

10 DATED: June 9, 2011

/s/ Marcus R. Mumford

11 Marcus R. Mumford
 12 Corvus Law Group

13 Attorneys for Plaintiff
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